No. 248

In the Supreme Court of the United States

OCTOBER TERM, 1942

THE UNITED STATES OF AMERICA, APPELLANT

v.

WILLIAM F. MONIA AND L. AUBREY WILLIAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT AS TO JURISDICTION

In the District Court of the United States, Northern District of Illinois, Eastern Division

No. 32776 (Cr.)

UNITED STATES OF AMERICA

v.

AMERICAN MEAT INSTITUTE ET AL.

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered on June 5, 1942, upon demurrers interposed by the Government to special pleas in bar entered by defendants William F. Monia and L. Aubrey Williams to the indictment in this cause. A petition for appeal was filed on *July 3, 1942,* and is presented to the District Court herewith, to wit, on the *3rd* day of *July, 1942.*

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by the Act of March 2, 1907, 34 Stat.

1246, as amended (18 U. S. C. § 682), commonly known as the Criminal Appeals Act, and by 28 U. S. C. § 345.

The following decisions sustain the direct appellate jurisdiction of the Supreme Court to review the judgment in this cause on the ground that the judgment is one sustaining a special plea in bar to the indictment, the defendants entering the plea not having been put in jeopardy. See *United States* v. *Murdock*, 284 U. S. 141; *United States* v. *Thompson*, 251 U. S. 407; *United States* v. *Oppenheimer*, 242 U. S. 85; *United States* v. *Barber*, 219 U. S. 72.

STATUTES INVOLVED

The statutes involved are the Act of February 25, 1903, c. 755, par. 1, 32 Stat. 904, 15 U. S. C. 32, and the Act of June 30, 1906, c. 3920, 34 Stat. 798, 15 U. S. C. 33, commonly known as the Immunity Statutes, the pertinent provisions of which are:

> * * * no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said acts [the Interstate Commerce Commission Act, the Sherman Antitrust Act, and other acts]: *Provided further*, that no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

That under the immunity provisions in the Act entitled [foregoing] * * * immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

THE ISSUES AND THE RULING BELOW

The indictment in this case was returned on January 19, 1941, by a grand jury duly impaneled, sworn, and charged in the District Court of the United States for the Eastern Division of the Northern District of Illinois. The indictment charges the defendants American Meat Institute, Armour and Company, Swift and Company, Wilson & Co., Inc., William F. Monia, L. Aubrey Williams, and others, with having violated Section 1 of the Sherman Act (Act of July 2, 1890, 26 Stat. 209 as amended (15 U. S. C. 1)) by engaging in a conspiracy to fix prices for the sale in the Chicago livestock market of live sheep shipped in interstate commerce for sale in such market.

The defendants William F. Monia and L. Aubrey Williams each filed special pleas in bar, setting up the foregoing Immunity Statute as a bar to their prosecution. The Government demurred to these special pleas. The facts involved in such special pleas are that Monia and Williams are natural persons who were subpoenaed to appear before the grand jury which subsequently indicted them in this case. Each was sworn and gave testimony

concerning transactions and matters on account of which he was thereafter named as a defendant. Neither defendant, during the course of such appearance before the grand jury, invoked the constitutional privilege against self-incrimination provided by the Fifth Amendment, or in any other way indicated the testimony was being given in consideration of securing statutory immunity from prosecution.

The issue raised by the Government's demurrer to the special pleas was whether a natural person appearing in response to subpoena and giving testimony under oath before a grand jury investigating violations of the Sherman Antitrust Act thereby secures automatic statutory immunity from prosecution on account of any transaction or matter concerning which he testifies, without the need for invoking the constitutional privilege against self-incrimination provided by the Fifth Amendment, or otherwise indicating that his testimony is being given in consideration of the protection against prosecution afforded by the Immunity Statute.

The District Court, in overruling the Government's demurrer, rejected the Government's contention that protection against prosecution provided by the Immunity Statute does not operate automatically on appearance of the witness under subpoena before the grand jury, but becomes operative as a bar to prosecution only when the witness asserts his constitutional privilege against

self-incrimination, or otherwise indicates that his testimony is being given in consideration of the protection against prosecution afforded by the Immunity Statute. The effect of the judgment of the District Court is to bar prosection of the defendants Monia and Williams for the offense charged in the indictment.

THE QUESTION IS SUBSTANTIAL

The question involved in the judgment of the District Court is substantial and of public importance. There is no decision of the Supreme Court precisely in point, but in analogous cases such as *Heike* v. *United States*, 227 U. S. 131, and *Brown* v. *United States*, 276 U. S. 134, the Supreme Court has held that the Immunity Statute is to be construed in the light of its purpose of making evidence available and compulsory that otherwise could not be got, and that the statute is to be regarded as coterminous with the constitutional privilege against self-incrimination afforded by the Fifth Amendment.

The question presented has been passed upon by several lower federal courts, both under the statutes here involved and under similar statutes granting immunity from prosecution for other offenses. Although there is a division of opinion on the issue, the weight of authority appears to support the contention of the Government. In *United States* v. *Greater New York Live Poultry Chamber of Com-*

merce, 33 F. 2d 1005 (S. D. N. Y., 1929), a case arising under the Sherman Act, it was expressly held that a witness received no immunity from prosecution unless he claimed such immunity before testifying. Accord: *United States* v. *Lay Fish Co.*, 13 F. 2d 136 (S. D. N. Y., 1926) [involving immunity provisions of the Sherman Act]; *United States* v. *Skinner*, 218 Fed. 870 (S. D. N. Y., 1914) [involving same immunity provisions as applied to Interstate Commerce Act]; and *Johnson* v. *United States*, 5 F. 2d 471 (C. C. A. 4th, 1925) [involving the immunity provisions of the National Prohibition Act]. See also Wigmore, *Evidence* (3d ed.) § 2282. Contra: *United States* v. *Pardue*, 294 Fed. 543 (S. D. Texas, 1923) [involving immunity provisions of the Federal Trade Commission Act]; *United States* v. *Moore*, 15 F. 2d 593 (D. Ore., 1926), and *United States* v. *Goldman*, 28 F. 2d 424 (D. Conn., 1928) [involving immunity provisions of the National Prohibition Act].

Pending a final determination of the issue presented in this cause, further grand jury investigations of Sherman Act violations will be greatly embarrassed for the reason that Government prosecutors in charge of such investigations frequently cannot know prior to a witness's appearance before a grand jury whether his testimony may or may not be self-incriminating and whether the witness's testimony may or may not be so vital

as to justify the calling of the witness under subpoena and the giving of statutory immunity to him as a consideration for his testimony.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

JULY 1942.

In the United States District Court, for the Northern District of Illinois, Eastern Division

No. 32776

UNITED STATES OF AMERICA,

v.

AMERICAN MEAT INSTITUTE ET AL.

MEMORANDUM

Defendants were indicted charged with conspiracy to violate the Sherman Anti-Trust Act. Defendants, Williams and Monia, each filed his plea in bar setting up that in response to a subpoena he had appeared before the grand jury which had returned this indictment and given sworn testimony substantially concerning the matters on account of which he was named as defendant, and asserting that under the provisions of Sections 32 and 33 of Title 15 of the United States Code (U. S. C. Title 15 Secs. 32 and 33) he was immune from this prosecution. The Government has demurred to the pleas.

The statute on which the defendants rely reads as follows:

> *Immunity of witness.*—No person shall be prosecuted or subjected to any penalty or

forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit or prosecution under sections 1 to 27, inclusive, of this chapter: *Provided*, That no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying (Feb. 25, 1903, c. 755 § 1, 32 Stat. 904, 15 U. S. C. A. 32).

Immunity extended to natural persons only.—Under the immunity provisions in section 32 of this title immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath (June 30, 1906, c. 3920, 34 Stat. 798, 16 U. S. C. 33).

Following the plain words of the statute it would seem clear that neither of these defendants can be prosecuted on account of the matters and things concerning which he testified before the grand jury. But the government says it is not bound by the words of the Act, we must read something else into it; what Congress intended was that only those persons are entitled to the benefit of the statute who, before testifying, declare to the court that they refused to testify on the grounds of self-incrimination and are thereafter required to testify.

It is a novel proposition that a criminal statute may be modified by reading into it something that would make conduct criminal, which, giving to the

words of the statute their plain meaning, was not criminal, or which would take away from one charged with crime a privilege granted in plain and unambiguous words.

Counsel would have us read this statute in the light of the Constitutional provision against self-incrimination and the decisions of the court construing that provision. To so construe such a statute would be to lay a trap for the unwary. One called to testify before a grand jury is entitled to rely on the words of the Act, which are quite plain, and not upon some ingenious construction worked out by learned counsel from the Constitution and prior decisions of the court.

In *United States* v. *Wiltberger*, 5 Wheat. 76, the defendant had been indicted for manslaughter, the offense having been committed on board an American vessel in the river Tigris, in the empire of China, about 100 yards from the shore and below the low water mark, thirty-five miles above the mouth of the river. The section of the statute upon which the prosecution was based provided for prosecution of one who committed manslaughter upon the high seas. Evidently the homicide was not committed upon the high seas but the Government contended for a construction of the whole act which would engraft the words of the 8th section, descriptive of the place in which murder might be committed, on the 12th section, which described the place where manslaughter might be committed. This transfer of the words of one

section to the other, it was contended would express the obvious intent of the legislature. Passing upon this contention the court said, p. 95:

> The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one, indeed, which would justify a court in departing from the plain meaning of the words, especially in a penal act in search of an intention which the words did not themselves suggest.

Judge Hutcheson, sitting in the District Court, in a well reasoned opinion, *United States* v. *Pardue, et al.*, 294 Fed. 543, held that a plea which set out facts substantially the same as those in the present case presented a bar to prosecution on account of matters testified to before the grand jury. To the same effect are *U. S.* v. *Golman*, 28 F. (2d) 424; *U. S.* v. *Ward*, 295 Fed. 576; *U. S.* v. *Moore*, 15 F. (2d) 593. I am aware that there are decisions to the contrary[1] but I cannot agree with them.

The demurrer to the pleas will be overruled. An order accordingly will be entered June 5, 1942.

(s) HOLLY,
Judge.

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[1] *U. S.* v. *Skinner*, 218 Fed. 870 is the leading case contra. Many of the cases cited by counsel for the Government did not involve the statute here under consideration.

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